

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

APR 25 2005

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY BS DEPUTY

JOHN K. CASEY,

Plaintiff,

vs.

JO ANNE BARNHART,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,

Defendant.

No. CIV-04-1434-W

**ORDER**

Plaintiff John K. Casey commenced this action on October 26, 2004, and the matter was thereafter referred to United States Magistrate Judge Bana Roberts for hearing, if necessary, and the submission to this Court of findings and a recommendation.

Casey caused three summonses to be issued on October 26, 2004, but there was no indication in record that service was ever obtained on the defendant. Accordingly, because the 120-day period for service provided by Rule 4(m), F.R.Civ.P., had expired, Magistrate Judge Roberts on March 3, 2005, issued an Order directing Casey to either file proof of service or show good cause why service had not been timely made. Magistrate Judge Roberts advised Casey that absent such a showing, she would recommend that the complaint be dismissed without prejudice.

Casey did not respond to Magistrate Judge Roberts' Order within the allotted time, and on March 30, 2005, Magistrate Judge Roberts issued a Report and Recommendation and recommended that this Court dismiss the case without prejudice to refiling. Casey was advised of his right to object to the Report and Recommendation, but again he did not file

any objection within the allotted time.

Upon de novo review of the record, the Court concurs with Magistrate Judge Roberts' recommended disposition of this matter. Casey has not advanced any reason or demonstrated any cause for his failure to timely effect service.

In the absence of such demonstration and because there are no factors in this case that mandate a permissive extension of time to perfect service, the Court finds dismissal of this matter for failure to serve the defendant within the time limits prescribed by Rule 4(m) is warranted.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation issued on March 30, 2005; and

(2) DISMISSES this matter without prejudice to refiling.

ENTERED this 25<sup>th</sup> day of April, 2005.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE